



# **Senate Select Committee on Superannuation and Financial Services**

## **Main Inquiry Reference (a) + (c)**

**Submission No. 32**

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**CORPORATE SUPER ASSOCIATION**

**SUBMISSION BY**

**CORPORATE SUPER ASSOCIATION**

**MAIN ENQUIRY REFERENCE (a)**

**SENATE SELECT COMMISSION ON  
SUPERANNUATION AND FINANCIAL SERVICES**

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## **1. EXECUTIVE SUMMARY & DIFFERENTIATION**

As we now represent over \$42 billion in Members' Funds, (equating to 60 % of total corporate superannuation in Australia), the Corporate Super Association appreciates this opportunity to bring the specifically 'Corporate Superannuation' view- point to the attention of the Senate Select Commission.

The clear differentiation of Corporate Superannuation Funds needs to be taken into account when considering any superannuation legislation: in summary there are three salient points of differentiation:

1. Corporate Super funds are Not-For-Profit ; they are Not commercial Financial Service providers and should not therefore be subject to the same regulatory and other legislation as Commercially-driven Financial Sales organisations
2. Corporate Super Funds represent many billions of dollars worth of Defined Benefits Schemes, which are essentially different from Accumulation schemes
3. Large Corporate Employers frequently provide enhanced benefits to the Members of their Corporate Super scheme, such as Higher-than SG Contributions; Administration & Insurance paid by the Employer; and Defined Benefits

The rapid growth of the Association is a ringing endorsement of the dire need to register the differentiation of the large Corporate, Not For Profit Superannuation funds - and for these different characteristics to be considered, tolerated and embodied in legislation

## **2. CREDENTIALS OF THE CORPORATE SUPER ASSOCIATION**

Despite being established only recently in late 1997, the Association now represents over \$42 billion in Members' Funds, concentrated in 32 Members, the largest Corporate Super Funds in Australia with over 300,000 Individual Members

Now identified as the dedicated representative body for Corporate Super Funds in Australia, with Member Funds representing over 60% of the entire corporate superannuation sector in Australia

The Corporate Super Funds which we represent are Not- For-Profit, and are Not financial service providers - there are no profit motives, nor commercial objectives to promote or market our funds

Our Members' sole motive is Not profit, but to act prudentially for the best interests of the individual Members of the Fund under the diligent provisions of SIS

### **3.CONSUMER PROTECTION & SIS**

3.1 The Corporate Super Association supports the protection of Consumers through the requirements of SIS and through the maintenance of Not –For-Profit Funds since

- Not For Profit puts Consumers' (Members) interests first
- Not-For-Profit means that Consumers' best interests are not prejudiced by commercial considerations
- The Democratic process under SIS of equal representation of employee and employer appointed Trustees ensures fairest representation of Members' best interests and optimum protection of Consumers (Members)
- SIS codifies Trustee principles and obliges education on Trustees
- The Trustee system ensures a close bond between individual Members ' needs and their super fund

3.2 The current system is working well - SIS has stood the test of time: why change SIS after so much cost and proven success ?

3.3 Indiscriminate change in laws will duplicate legislation, and incur considerable further costs (see the adverse experience of New Zealand) , creating a 'Legal Monster"

3.4 This could be the straw to break the corporate back in providing higher-than-SGC contributions

#### **RECOMMENDATION:**

- Maintain Consumer Protection through SIS for Corporate Super Funds
- Avoid imposing extra compliance on Corporate Super and avoid making superannuation even more complex for the Not-For-Profit super funds

### **4. COMMERCIALY-DRIVEN versus NOT FOR PROFIT SUPER FUNDS**

4.1.Essential to introduce in the proposed legislation an obvious differentiation between those Service Providers and Agents who have a financial interest or a profit–driven motive, and those who are acting in a fiduciary capacity with no profit motive nor any commercial interest

4.2. We support the basis of Clerp 6 where it is designed specifically for Financial Service Business Providers, who have a financial interest in selling and marketing their products since their motive is Profit. The proposals appear useful in bringing greater transparency and accountability to the financial services industry and in helping to protect consumers from voracious service providers

4.3. On the other hand Trustees of large Corporate Super Trustees are acting on an entirely different **fiduciary** basis – under SIS and with Duty of Care for the Members – and not to make profit:

- Trustees have no commercial interest or advantage.
- Corporate Super Funds care for current and past employees and their families - exclusively 'in-house'
- A service is provided - not a product for sale for profit or for financial interest
- Corporate Super Funds are not financial services businesses
- Corporate Super Funds are not marketed to the 'general public'
- Corporate Super Funds deal with all levels of Members' knowledge
- Raison d'être is to protect the Members from Service providers and to provide impartial advice and help
- Extra Benefits for Members often include Administration and Insurance being provided free of cost for the Employee (paid for by the Employer)

4.4. It is therefore unreasonable, inequitable and illogical to apply the proposed Financial Services Reform Bill equally to those with a clear Commercial Profit Motive as to those with No Profit Motive

## **RECOMMENDATION.**

- Clearly differentiate between Commercially-driven superannuation funds and Not-For-Profit superannuation
- Introduce the Financial Services Reform Bill for Commercially-driven and Public Offer super funds
- Allow Trustees of large Corporate Funds to continue to comply with the rigours of SIS
- Concede that it is inappropriate and unreasonable that Corporate Trustees be obliged to comply with the same licensing and other regulatory requirements as Financial Sales organisations

## **5.DEFINED BENEFIT SCHEMES**

5.1 Another core differentiation of most large Corporate Super Funds is that they run **Defined Benefit Schemes** which comprise significant billions of dollars of investments

5.2 Defined Benefit Schemes, unlike Accumulation Schemes, provide guaranteed Pension Benefits for individual Members irrespective of investment market conditions, since the **Employer takes-on these risks**

5.3 Conversely benefits provided by Accumulation Schemes depend solely on what investments returns the Member has been lucky enough to achieve over time.

- Defined Benefit Schemes remove all Investment Risk from the 'consumer' or employee
- Defined Benefit schemes transfer the onus of Investment Risk and the consequent Funding Rate required from the employee to the employer
- Defined Benefit Schemes are entirely different from Accumulation schemes and are not comparable although they are both superannuation arrangements
- Defined Benefit Schemes provide Consumers (Members) with a method to avoid all Investment Risk

5.4 However the proposed legislation makes no allowance or provision for Defined Benefit Schemes and blithely treats them the same as Accumulation schemes; this is a clear oversight and should be corrected

#### **RECOMMENDATION:**

- Allowance should be made to encourage the maintenance of Defined Benefit Schemes
- Defined Benefit Schemes to continue to be regulated under SIS
- Defined Benefit Funds to be given voluntary compliance with Choice of Fund

## **6. FINANCIAL SERVICES REFORM BILL & SIS**

6.1 Full clarification of how the proposed legislation fits vis-a-vis SIS is needed, to avoid the Financial Services Reform Bill becoming yet another complication in superannuation - benefiting Service Providers and increasing the work-load of Regulatory Bodies, but bringing no practical visible benefit to the intended beneficiaries, the individual Members of super schemes

6.2 Consumer Protection and Prudential Supervision is well covered under existing SIS legislation for Trustees, with its central pillar of democratically-elected Trustees representing individual Members' best interests under SIS and Duty of Care

6.3 Further it must be pointed out that SIS has been working well since implementation - and 'if it ain't broke why fix it?'

6.4 Accountants, Bankers, Financial Planners and other Service Providers will undoubtedly support the Financial Services Bill proposals since they will push whole 'shoals' of individual 'prospects' (currently well protected in the Not For Profit super Fund under SIS) into the jaws of the awaiting Service Providing predators

6.5 If our recommendation is not adopted, then Corporate Super Funds will be faced with a whole new series of costs and resources to provide, and will be treated as if they are Financial Service Businesses - which they are not.

6.6 Consequently most of our Members envisage they will consider relinquishing their support of the Corporate Super Scheme, almost certainly 'wash their hands' of super.

6.7 The consequence to individual super scheme Members of this negative outcome is that they (the Consumers) will be significantly worse off, if their Corporate Employer no longer provides higher than SGC Contributions, free administration and free insurance

6.8 To best ensure Consumer Protection and Prudential Supervision:

- Democratic process of equal representation by Trustees should be maintained,
- Not For Profit Funds should be regulated differently from Profit-Motivated Financial Services Business
- Corporate Employers should be encouraged to maintain Contributions and Benefits in excess of SGC

#### **RECOMMENDATION:**

- Corporate Super Funds to continue to be governed under SIS legislation
- Apply the proposed Financial Services Bill to Commercial, Profit-Driven Financial Services Businesses

### **7. COMPLICATIONS OF 'CHOICE OF FUND'**

7.1 If Choice of Fund legislation is endorsed, potential complications will be avoided if our central recommendations under Choice of Fund are endorsed - please see appendix 'Corporate Super Association on Choice'

7.2 The essential recommendations are

- Allow those Corporate Super Funds which contribute in excess of SGC voluntary compliance with Choice
- Protect the existing workplace agreements
- Default fund remains as the existing Corporate Fund or agreed Industry Fund
- Make Investment Choice mandatory
- Allow Defined Benefit Funds voluntary compliance with Choice of Fund

### **8. CONSUMER PROTECTION AGAINST COMMISSION-DRIVEN SALES**

Not For Profit Corporate Super Funds provide the Consumer (Member) with the safeness and dependability of a Fiduciary Trustee mechanism, and cannot possibly be considered under the same legislation as those who sell their products in order primarily to make Profit for a Financial Services Company

#### **RECOMMENDATIONS:**

- Service Providers' commission-based selling to be banned - to be replaced with fee for service or small 'trail' commissions over the longer term so that
  - (a) Consumer interests may be better protected by reducing costs and through
  - (b) The long-term nature of client-relationship being put first before short term commissions
- Under potential Choice of Fund scenario, all comparisons of Funds to be honest, equitable and not-misleading i.e show not just contributions, forecast growth and charges of any Fund, but additionally show the added-value benefit of a Corporate Super Fund, where the employer pays the costs of administration and insurance and higher than SGC contributions - and indicate if these benefits would be lost if the employer contributions were paid outside of the 'mother' corporate super fund



## **9. FREQUENCY OF SGC PAYMENTS**

9.1 Being Not For Profit funds, our Members are highly concerned to protect the benefits of their relevant Consumers the Individual Members of the Corporate Super Funds .

The frequency of payment of SGC is a critical element in ensuring that future superannuation entitlements of Consumers (Members) are protected

9.2 Delayed or infrequent payment of SGC can expose the individual to considerable risk

9.3 Further there appears to be little attention paid in the proposed Financial Services Bill and legislation concerning Choice, concerning a mechanism to check that contributions to a nominated super fund have actually been made

9.4 In fact, this potential problem is highly-unlikely to occur in the large Corporate Super Funds and cannot exist in Defined Benefit Funds. Our recommendations on allowing large Corporate Super Funds voluntary compliance with Choice go a long way to addressing this problem, but will not address this problem for those smaller funds which must comply with Choice.

### **RECOMMENDATION:**

- Corporate Employers be obliged to pay SGC on at least a Monthly basis
- Voluntary compliance with Choice for employers paying in excess of SGC
- Voluntary compliance with Choice for employers offering Defined Benefit schemes

## **10. OVERSEAS INVESTMENTS & TAXATION**

The current system is laudable in that there are few restrictions on sensible investment areas, but it is anomalous that prudent Corporate Super funds are caught up in the same complex and restraining legislation (FIF and laws on CIVs) as those other funds who might have different objectives in investing overseas

The major Corporate Super Funds' objective in investing overseas is to help provide in a prudent way for Members' long term retirement benefits - and not to seek to defer tax payable.

### **RECOMMENDATION**

- Corporate Super Funds should be exempt from the 'accruals regime' under FIF
- Corporate Super Funds should receive full tax credits for all foreign tax paid directly or at a second tier level

## **11. GST**

Clarification is needed concerning potential GST liability of those Employers currently providing Services free of charge to the Superannuation Fund (such as Administration).

Under the GST Act, a 'deemed' value could potentially be put on the Market Value of those services provided - thus putting the Employer under financial disadvantage and ultimately putting the Member ( Consumer) at a disadvantage since the Employer may cease to provide these free of cost services if there are penalties attached

## **12. APPENDIX**

# CORPORATE SUPER ASSOCIATION

## RE 'CHOICE OF FUND'

SUMMARY FEBRUARY 2000

- **CONTENTS:**

1. Macro Issues
2. Defined Benefit Funds
3. Default Fund
4. Chosen Fund
5. Strategic Recommendations

### 1. MACRO ISSUES

#### 1.1

Corporate Super Funds are not-for-profit

Corporate Super Funds exist solely to protect Members' optimum interests ( Trustees have fiduciary obligations)

Corporate Super Funds sometimes pay in excess of SGC (paternalism and 'belonging')

Corporates often pay for fixed & running overheads of running super dept ( paternalism and 'belonging'))

#### 1.2

Service Providers are driving compulsory Choice of Fund ( self-interest)

Service Providers are driven by Profit motive

#### 1.3

No proof that Choice of Funds is desired by Members ( high degree of satisfaction with current corporate super funds)

Clear proof that Investment Choice is of little interest to vast majority of members (small uptake in Investment Choices within Funds)

#### 1.4

Choice of Fund is certainly advantageous for Service Providers, since huge profit potential for them

#### 1.5

Not for Profit Funds will be attacked by heavy marketing from commercially-driven public funds

Mis-selling and commission-generated business will reduce Members' long term returns ( thus exacerbate Members likely need to depend on the State in retirement)

Churning & encouragement of Active Switching by Service Providers will reduce Members accumulated super savings ( and aggravate demands on State Pensions)

1.6

Current Fund will have to increase marketing costs to protect Membership ( thus reduction in ultimate benefits and greater demand on State pensions)

1.7

Increased competition will put heavier emphasis on marketing, and on short term investment returns - thereby increasing the investment risk profile and jeopardising members ultimate benefits ( aggravates future dependency on State Pensions)

1.8

Members cannot be expected to be properly equipped to make the right choice of Fund  
superannuation and benefit design are highly complicated  
Vast array of benefit design making comparisons meaningless i.e different death & disablement cover  
Defined Benefit Funds need to be properly explained/clarified

1.9

Members cannot be expected to make the right Investment choices  
in an ever more complex Investment World  
probable that wrong Investment Choices will be made by individuals over time (reduction in ultimate benefits: heavier demand on State Pensions)

1.10

Many Corporates will abandon subsidising Super for employees if Choice introduced without amendments  
Why continue to provide benefits in excess of SGC  
Why continue to sponsor a shrinking fund whilst suffering increasing admin costs?  
Why spend more money on super / investment education?  
How accommodate various Service Providers requests to 'present' at workplace under unrestricted  
Unlimited Choice scenario  
Unacceptable /unconsciencable that Corporate liability for what's said by Service Provider at workplace  
Members will suffer - lower Pensions: bad impact on morale & job satisfaction: higher turn-over of staff

1.11

As current Funds shrink through being ravaged by Service Providers, 'economies of scale' are eroded by loss of members and costs will rise, therefore member benefits will reduce (and aggravate demand on State Pensions)

1.12

Confusion still over 'Investment Choice within a fund', and 'Choice of Fund'

1.13

Saving for Super should be a discipline to avoid dependency on the State's social security pension in old age  
Choice will lower the individual's responsibility to save voluntarily

1.14

Choice of Fund legislation should not override provisions in enterprise agreements

1.15

Timing of introduction of Choice of Fund - no earlier than 1 JULY 2002

## **2. DEFINED BENEFIT FUNDS**

2.1

Exclude from proposed legislation

2.2

Not-for Profit Funds, designed for the benefit of the Members

2.3

No investment risk for member

No ultimate Benefit Risk for member

2.4

Protects against increasing demands on Social Security pension benefits ( corporate takes onus)

2.5

Provision usually of full gamut of other benefits ( life ins: tpd )

2.6

Employer bears brunt of risk of Funding Rate

Employer bears the Investment and Market Risks

2.7

Usually involve compulsory member contributions (little encouragement in accumulation plans)

2.8

Peace of mind for Member

Avoids need for members to meddle in complex investment issues

2.9

Protects members against rapacious Service Providers, who are driven by making profit

### **3. DEFAULT FUND**

3.1

Employer Fund may fund in excess of SGC – if so exclude from proposed legislation

3.2

Default automatic if no Choice made

Employer not required to chase-up members to sign a form stating ‘no change’

3.3

Default Fund to be existing corporate Fund or Fund agreed through enterprise agreement

3.4

Employer to provide KFS & information on this Fund alone

3.5

Could be varied by agreement b/n employer and employee

Right to change on request – not automatically annually (to avoid compliance obligations to remind employees annually) since Annual Review could encourage plan hopping

3.6  
Life Insurance & TPD - minimum level ? Separate life ins from Super ?

3.7  
Should oblige Member to contribute ?

#### **4. CHOSEN FUND**

4.1  
Employer to have no liability from employee exercising choice ( except for KFS on Default Fund)

4.2  
Employers should not be obliged to display any KFS or other promotional material at workplace ( except for Default Fund)  
difficult to ensure latest info if there are many sites  
Company could be vulnerable for claims of misleading or poor advice  
Disclosure requirements must be simple & consistent, with standards that reflect the differences b/n defined benefit and accumulation plans

4.3  
Chosen Fund must be able electronically to have data transmittable & monies transferable directly from payroll  
Employer to have right of rejection of Fund, if money & data not electronically transmittable from payroll system  
Prudential Regulation of Clearing House for contributions?  
Who will maintain prudential overseeing of contribution remittances in Unlimited Choice? (see National Textiles )

4.4  
Limit the number of switches

4.5  
Transferring of existing Member balances needs to be addressed: Trustees must be able to amend Trust Deed to facilitate transfer

4.6  
Life Ins & TPD  
minimum levels?  
Transferability ?  
Inability to transfer? e.g due to severe medical condition etc ?  
Cost of transfer – will Member rationally find best 'deal'; corporate scheme buys in bulk  
Likelihood of cessation, due to fund hopping and delays in getting cover  
Vulnerability of members & their dependents  
Employer to have no liability

#### **5. STRATEGIC RECOMMENDATIONS**

- Make Investment Choice mandatory
- Exempt Corporate Super Funds from proposed Choice legislation (Provided that certain minimum standards met, and some level of Investment Choice provided)
- Exclude Defined Benefit Funds from Choice of Fund legislation
- **Exclude from Choice of Fund legislation those Funds whose benefits are in excess of SGC ( DB or DC) - provided that certain minimum standards met, and some level of Investment Choice provided**

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